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PART-VII

GOVERNMENT OF MEGHALAYA

ORDERS BY THE GOVERNOR

NOTIFICATIONS

The 3rd March, 2009.

No.LL(B).3/2009/68.—The following Acts passed by the Parliament and assent by the President of India and Published in the Gazette of India Extra Ordinary, Part II Section I on the date indicated below is hereby republished for general information.

Sl. No.	Name of Act	Act No. and Year	Date of Publication in the Gazette of India
1.	The Drugs & Cosmetics (Amendment) Act, 2008.	Act No. 26 of 2008	5. 12. 2008
2.	The Unorganised Worker's Social Security Act, 2008.	Act No. 33 of 2008	31. 12. 2008
3.	The National Investigation Agency Act, 2008.	Act No. 34 of 2008	31. 12. 2008
4.	The Unlawful Activities (Prevention) Amendment Act, 2008.	Act No. 35 of 2008	31. 12. 2008

THE DRUGS AND COSMETICS (AMENDMENT) ACT 2008.

AS PASSED BY THE HOUSE OF PARLIAMENT

AN

ACT

further to amend the Drugs and Cosmetics Act, 1940.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Drugs and Cosmetics (Amendment) Act, 2008.

Short title
and commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

Insertion of
new section
17E.

Adulterated
cosmetics.

2. After section 17D of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the principal Act), the following section shall be inserted, namely,—

23 of 1940.

"17E. For the purposes of this Chapter, a cosmetic shall be deemed to be adulterated,—

(a) if it consists in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength."

Amendment
of section 18.

3. In section 18 of the principal Act, in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely,—

"(ii) any cosmetic which is not of a standard quality, or is misbranded, adulterated or spurious;"

Amendment
of section
26A.

4. In section 26A of the principal Act, for the word "prohibit", the words "regulate, restrict or prohibit" shall be substituted.

Insertion of
new section
26B.

5. After section 26A of the principal Act, the following section shall be inserted, namely,—

Power of
Central
Government to
regulate or
restrict,
manufacture,
etc., of drug in
public interest.
Amendment
of section 27.

"26B. Without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied that a drug is essential to meet the requirements of an emergency arising due to epidemic or natural calamities and that in the public interest, it is necessary or expedient so to do, then, that Government may, by notification in the Official Gazette, regulate or restrict the manufacture, sale or distribution of such drug."

6. In section 27 of the principal Act,—

(i) in clause (a),—

(A) for the figures, letter and words "17B or which", the figures, letter and words "17B and which" shall be substituted.

(B) for the words "punishable with imprisonment for a term which shall not be less than five years but which may extend to a term of life and with fine which shall not be less than ten thousand rupees;", the words "punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more:" shall be substituted.

(C) the following provisos shall be inserted, namely:—

"Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or spurious drugs referred to in this clause:

Provided further that where the use of the adulterated or spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.

Explanation.—For the purposes of the second proviso, the expression "relative" means—

(i) spouse of the deceased person; or

(ii) a minor legitimate son, and unmarried legitimate daughter and a widowed mother; or

(iii) parent of the minor victim; or

(iv) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or

(v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death,—

(a) the parent; or

(b) a minor brother or an unmarried sister; or

(c) a widowed daughter-in-law; or

(d) a widowed sister; or

(e) a minor child of a pre-deceased son; or

(f) a minor child of a pre-deceased daughter where no parent of the child is alive; or

(g) the paternal grandparent if no parent of the member is alive;";

(ii) in clause (b),—

(A) for the words "not be less than one year but which may extend to three years and with fine which shall not be less than five thousand rupees", the words "not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(B) in the proviso, for the words "less than one year and of fine of less than five thousand rupees", the words "less than three years and of fine of less than one lakh rupees" shall be substituted;

(iii) in clause (c),—

(A) for the words "not be less than three years but which may extend to five years and with fine which shall not be less than five thousand rupees", the words "not less than seven years but which may extend to imprisonment for life and with fine which shall not be three lakh rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(B) in the proviso, for the words "less than three years but not less than one year", the words "less than seven years but not less than three years and of fine of less than one lakh rupees" shall be substituted;

(iv) in clause (d), for the words "and with fine", the words "and with fine which shall not be less than twenty thousand rupees" shall be substituted.

Amendment
of section
27A.

7. In section 27A of the principal Act, for clauses (i) and (ii), the following clauses shall be substituted, namely,—

(i) any cosmetic deemed to be spurious under section 17D or adulterated under section 17E shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than fifty thousand rupees or three times the value of the cosmetics confiscated, whichever is more;

(ii) any cosmetic other than a cosmetic referred to in clause (i) in contravention of any provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees, or with both."

Amendment
of section 28.

8. In section 28 of the principal Act, for the words "with fine which may extend to one thousand rupees or with both", the words "with fine which shall not be less than twenty thousand rupees or with both" shall be substituted.

Amendment
of section
28A.

9. In section 28A of the principal Act, for the words "with fine which may extend to one thousand rupees or with both", the words "with fine which shall not be less than twenty thousand rupees or with both" shall be substituted.

Amendment
of section 29.

10. In section 29 of the principal Act, for the words "five hundred rupees", the words "five thousand rupees" shall be substituted.

Amendment
of section 30.

11. In section 30 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (a),—

(A) for the words "not be less than two years but which may extend to six years and with fine which shall not be less than ten thousand rupees", the words "not be less than seven years but which may extend to ten years and with fine which shall not be less than two lakh rupees" shall be substituted;

(B) in the proviso, for the words "less than two years and of fine of less than ten thousand rupees", the words "less than seven years and of fine of less than one lakh rupees" shall be substituted;

(ii) in clause (b), for the words "shall not be less than six years but which may extend to ten years and with fine which shall not be less than ten thousand rupees", the words "shall not be less than ten years but which may extend to imprisonment for life and with fine which shall not be less than three lakh rupees" shall be substituted;

(iii) in clause (c), for the words "five thousand rupees", the words "fifty thousand rupees" shall be substituted;

(b) in sub-section (2), for the words "ten years, or with fine, or with both", the words "two years, or with fine which shall not be less than ten thousand rupees or with both" shall be substituted.

Amendment
of section 32.

12. In section 32 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

“(1) No prosecution under this Chapter shall be instituted except by—

(a) an Inspector; or

(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

(c) the person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.”.

13. After section 32A of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 32B.

2 of 1974.

"32B. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under clause (b) of sub-section (1) of section 13, section 28 and section 28A of this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the Central Government or by any State Government or any officer authorised in this behalf by the Central Government or a State Government, on payment for credit to that Government of such sum as that Government may, by rules made in this behalf, specify:

Compounding of certain offences.

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded:

Provided further that in cases of subsequent offences, the same shall not be compoundable.

(2) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the court to which he is committed or, as the case may be, before which the appeal is to be heard.

(3) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith.”.

14. In section 33 of the principal Act, in sub-section (2),—

Amendment of section 33.

(i) after clause (dd), the following clause shall be inserted, namely,—

"(dda) prescribe under clause (d) of section 17E the colour or colours which a cosmetic may bear or contain for the purposes of colouring;”,

(ii) in clause (p), the word "and" occurring at the end shall be omitted;

(iii) in clause (q), the word "and" shall be inserted at the end;

(iv) after clause (q), the following clause shall be inserted, namely,—

"(r) sum which may be specified by the Central Government under section 32B.”.

15. In section 33-I of the principal Act,—

Amendment of section 33-I.

(a) in sub-section (1),—

(i) for clause (a), the following clause shall be substituted, namely:—

"(a) any Ayurvedic, Siddha or Unani drug—

(i) deemed to be misbranded under section 33E,

(ii) deemed to be adulterated under section 33EE, or

(iii) without a valid licence or in violation of any of the conditions thereof, as required under section 33 EEC,

shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than twenty thousand rupees or three times the value of the drugs confiscated, whichever is more;"

(ii) in clause (b), for the words "five thousand rupees", occurring at both the places, the words "fifty thousand rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(iii) after clause (b), the following clause shall be inserted, namely:—

"(c) any Ayurvedic, Siddha or Unani drug in contravention of the provisions of any notification issued under section 33EED shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees or three times the value of the drugs confiscated, whichever is more.";

(b) in sub-section (2), for the words "three months and with fine which shall not be less than five hundred rupees", the words "six months and with fine which shall not be less than ten thousand rupees" shall be substituted.

Amenment of
section 33J.

16. In section 33J of the principal Act,—

(a) in clause (a), for the words "two thousand rupees", the words "fifty thousand rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(b) in clause (b), for the words "five thousand rupees" occurring at both the places, the words "one lakh rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(c) in clause (c), for the words "six months and with fine which shall not be less than one thousand rupees", the words "one year and with fine which shall not be less than twenty thousand rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted.

Insertion of
new sections
33KA and
33KB.

17. After section 33K of the principal Act, the following sections shall be inserted, namely,—

Disclosure of
name of
manufacturer,
etc.

"33KA. Every person, not being the manufacturer of any Ayurvedic, Siddha or Unani drug or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the Ayurvedic, Siddha or Unani drug.

Maintenance
of records and
furnishing of
information.

33KB. Every person holding a licence under clause (c) of section 33EEC shall keep and maintain such records, registers and other documents as may be prescribed and shall furnish to any officer or authority exercising any power or discharging any function under this Act such information as is required by such officer or authority for carrying out the purposes of this Act."

Amendment
of section
33N.

18. In section 33N of the principal Act, in sub-section (2),—

(i) in clause (gga), the word "and" occurring at the end shall be omitted;

(ii) after clause (gga), the following clause shall be inserted, namely,—

"(ggb) prescribe the records, registers or other documents to be kept and maintained under section 33KB; and".

Amendment
of section
36A.

19. In section 36A of the principal Act, for the words "all offences under this Act", the words, brackets, figures and letters "all offences (except the offences triable by the Special Court under section 36AB or Court of Session) under this Act" shall be substituted.

20. After section 36A of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 36AB, 36AC, 36AD and 36AE.

'36AB. (1) The Central Government, or the State Government, in consultation with the Chief Justice of the High Court, shall, for trial of offences relating to adulterated drugs or spurious drugs and punishable under clauses (a) and (b) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and clause (b) of sub-section (1) of section 30 and other offences relating to adulterated drugs or spurious drugs, by notification, designate one or more Courts of Session as a Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Special Courts.

Explanation.—In this sub-section, "High Court" means the High Court of the State in which a Court of Session designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

36AC. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

2 of 1974.

Offences to be cognizable and non-bailable in certain cases.

(a) every offence, relating to adulterated or spurious drug and punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be cognizable.

(b) no person accused, of an offence punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

2 of 1974.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 36AB.

2 of 1974.

Application of
Code of
Criminal
Procedure,
1973 to
proceedings
before Special
Court.

36AD. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor: 2 of 1974.

Provided that the Central Government or the State Government may also appoint, for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly. 2 of 1974.

Appeal and
revision.

36AE. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.'. 2 of 1974.

THE UNORGANISED WORKERS' SOCIAL SECURITY ACT, 2008.

AN

ACT

to provide for the social security and welfare of unorganised workers and for other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Unorganised Workers' Social Security Act, 2008. Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “employer” means a person or an association of persons, who has engaged or employed an unorganised worker either directly or otherwise for remuneration;

(b) “home-based worker” means a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs;

(c) “identity card” means a card, document or certificate issued to an unorganised worker by the District Administration under sub-section (3) of section 10;

(d) “National Board” means the National Social Security Board for unorganised workers constituted under sub-section (1) of section 5;

(e) “notification” means a notification published in the Official Gazette;

(f) “organised sector” means an enterprise which is not an unorganised sector;

(g) “prescribed” means prescribed by rules made under this Act by the Central Government or the State Government, as the case may be;

(h) “registered worker” means an unorganised worker registered under sub-section (3) of section 10;

(i) “Schedule” means the Schedule annexed to the Act;

(j) “State Board” means the (name of the State) State Social Security Board for unorganised workers constituted under sub-section (1) of section 6;

(k) “self-employed worker” means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government;

(l) “unorganised sector” means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten;

(m) “unorganised worker” means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act; and

(n) “wage worker” means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.

CHAPTER II

SOCIAL SECURITY BENEFITS

Framing of scheme.

3.(1) The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to—

(a) life and disability cover;

(b) health and maternity benefits;

(c) old age protection; and

(d) any other benefit as may be determined by the Central Government.

(2) The schemes included in the Schedule 1 to this Act shall be deemed to be the welfare schemes under sub-section (1).

(3) The Central Government may, by notification, amend the Schedules annexed to this Act.

(4) The State Government may formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to—

(a) provident fund;

(b) employment injury benefit;

(c) housing;

(d) educational schemes for children;

(e) skill upgradation of workers;

(f) funeral assistance; and

(g) old age homes.

4. (1) Any scheme notified by the Central Government may be—

(i) wholly funded by the Central Government; or

(ii) partly funded by the Central Government and partly funded by the State Government; or

(iii) partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the Central Government.

(2) Every scheme notified by the Central Government shall provide for such matters that are necessary for the efficient implementation of the scheme including the matters relating to,—

(i) scope of the scheme;

(ii) beneficiaries of the scheme;

(iii) resources of the scheme;

(iv) agency or agencies that will implement the scheme;

(v) redressal of grievances; and

(vi) any other relevant matter.

Funding of
Central
Government
Schemes.

CHAPTER III

NATIONAL SOCIAL SECURITY BOARD FOR UNORGANISED WORKERS

5. (1) The Central Government shall, by notification, constitute a National Board to be known as the National Social Security Board to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

National
Social Security
Board.

(2) The National Board shall consist of the following members, namely:—

(a) Union Minister for Labour and Employment—Chairperson, *ex officio*;

(b) the Director General (Labour Welfare) – Member-Secretary, *ex officio*; and

- (c) thirty-four members to be nominated by the Central Government, out of whom –
 - (i) seven representing unorganised sector workers;
 - (ii) seven representing employers of unorganised sector;
 - (iii) seven representing eminent persons from civil society;
 - (iv) two representing members from Lok Sabha and one from Rajya Sabha;
 - (v) five representing Central Government Ministries and Departments concerned; and
 - (vi) five representing State Governments.

(3) The Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.

(4) The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the National Board shall be such as may be prescribed:

Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the Minorities and Women.

(5) The term of the National Board shall be three years.

(6) The National Board shall meet at least thrice a year, at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.

(7) The members may receive such allowances as may be prescribed for attending the meetings of the National Board.

(8) The National Board shall perform the following functions, namely:—

- (a) recommend to the Central Government suitable schemes for different sections of unorganised workers;
- (b) advise the Central Government on such matters arising out of the administration of this Act as may be referred to it;
- (c) monitor such social welfare schemes for unorganised workers as are administered by the Central Government;
- (d) review the progress of registration and issue of identity cards to the unorganised workers;
- (e) review the record keeping functions performed at the State level;
- (f) review the expenditure from the funds under various schemes; and
- (g) undertake such other functions as are assigned to it by the Central Government from time to time.

CHAPTER IV

STATE SOCIAL SECURITY BOARD FOR UNORGANISED WORKERS

State Social
Security
Board.

6. (1) Every State Government shall, by notification, constitute a State Board to be known as (name of the State) State Social Security Board to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(2) The State Board shall consist of the following members, namely: —

- (a) Minister of Labour and Employment of the concerned State—Chairperson, *ex officio*;
- (b) the Principal Secretary or Secretary (Labour)—Member—Secretary, *ex officio*; and

(c) twenty-eight members to be nominated by the State Government, out of whom—

- (i) seven representing the unorganised workers;
- (ii) seven representing employers of unorganised workers;
- (iii) two representing members of Legislative Assembly of the concerned State;
- (iv) five representing eminent persons from civil society; and
- (v) seven representing State Government Departments concerned.

(3) The Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.

(4) The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the State Board shall be such as may be prescribed:

Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the Minorities and Women.

(5) The term of the State Board shall be three years.

(6) The State Board shall meet at least once in a quarter at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.

(7) The members may receive such allowances as may be prescribed for attending the meetings of the State Board.

(8) The State Board shall perform the following functions, namely:—

(a) recommend the State Government in formulating suitable schemes for different sections of the unorganised sector workers;

(b) advise the State Government on such matters arising out of the administration of this Act as may be referred to it;

(c) monitor such social welfare schemes for unorganised workers as are administered by the State Government;

(d) review the record keeping functions performed at the District level;

(e) review the progress of registration and issue of cards to unorganised sector workers;

(f) review the expenditure from the funds under various schemes; and

(g) undertake such other functions as are assigned to it by the State Government from time to time.

7. (1) Any scheme notified by the State Government may be—

(i) wholly funded by the State Government; or

(ii) partly funded by the State Government, partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the State Government.

Funding of
State
Government
Schemes.

(2) The State Government may seek financial assistance from the Central Government for the schemes formulated by it.

(3) The Central Government may provide such financial assistance to the State Governments for the purpose of schemes for such period and on such terms and conditions as it may deem fit.

Record
keeping by
District
Administra-
tion.

8. The record keeping functions for the purpose of this Act shall be performed by the District Administration:

Provided that the State Government may direct that the record keeping function shall be performed by—

(a) the District Panchayat in rural areas; and

(b) the Urban Local Bodies in urban areas.

Workers
facilitation
centres.

9. The State Government may set up such Workers' facilitation centres as may be considered necessary from time to time to perform the following functions, namely:—

(a) disseminate information on available social security schemes for the unorganised workers;

(b) facilitate the filling, processing and forwarding of application forms for registration of unorganised workers;

(c) assist unorganised worker to obtain registration from the District Administration;

(d) facilitate the enrollment of the registered unorganised workers in social security schemes.

CHAPTER V

REGISTRATION

Eligibility for
registration
and social
security
benefits.

10. (1) Every unorganised worker shall be eligible for registration subject to the fulfilment of the following conditions, namely:—

(a) he or she shall have completed fourteen years of age; and

(b) a self-declaration by him or her confirming that he or she is an unorganised worker.

(2) Every eligible unorganised worker shall make an application in the prescribed form to the District Administration for registration.

(3) Every unorganised worker shall be registered and issued an identity card by the District Administration which shall be a smart card carrying a unique identification number and shall be portable.

(4) If a scheme requires a registered unorganised worker to make a contribution, he or she shall be eligible for social security benefits under the scheme only upon payment of such contribution.

(5) Where a scheme requires the Central or State Government to make a contribution, the Central or State Government, as the case may be, shall make the contribution regularly in terms of the scheme.

CHAPTER VI

MISCELLANEOUS

Power of
Central
Government
to give
directions.

11. The Central Government may give directions to—

(i) the National Board; or

(ii) the Government of a State or the State Board of that State,

in respect of matters relating to the implementation of the provisions of this Act.

Vacancies,
etc., not to
invalidate
proceedings.

12. No proceedings of the National Board or any State Board shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the National Board or, as the case may be, the State Board.

Power to
make rules by
Central
Government.

13. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the contributions to be collected from the beneficiaries of the scheme or the employers under sub-section (1) of section 4;

(b) the number of persons to be nominated, the term of office and other conditions of service of members, the procedure to be followed in the discharge of functions by, and the manner of filling vacancies of, the National Board under sub-section (4) of section 5;

(c) the rules of procedure relating to the transaction of the business at the meeting of the National Board under sub-section (6) of section 5;

(d) the allowances for attending the meetings of the National Board under sub-section (7) of section 5;

(e) the form for making an application for registration under sub-section (2) of section 10; and

(f) any other matter which is required to be, or may be, prescribed.

14. (1) The State Government may, by notification, make rules to carry out the provisions of this Act.

Power to
make rules by
State
Government.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the number of persons to be nominated, the term of office and other conditions of service of members, the procedure to be followed in the discharge of functions by, and the manner of filling vacancies of, the State Board under sub-section (4) of section 6;

(b) the rules of procedure relating to the transaction of business at the meetings of the State Board under sub-section (6) of section 6;

(c) the allowances for attending the meetings of the State Board under sub-section (7) of section 6;

(d) the contributions to be collected from the beneficiaries of the scheme or the employers under sub-section (1) of section 7;

(e) the form in which the application for registration shall be made under sub-section (2) of section 10; and

(f) any other matter which is required to be, or may be, prescribed.

15. (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Laying of
rules.

(2) Every rule made under this Act by State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

16. Nothing contained in this Act shall affect the operation of any corresponding law in a State providing welfare schemes which are more beneficial to the unorganised workers than those provided for them by or under this Act.

Saving of
certain laws.

17. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Power to
remove
difficulties.

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

SCHEDULE I

[See sections 2(i) and (j)]

SOCIAL SECURITY SCHEMES FOR THE UNORGANISED WORKERS

S. No. Name of the Scheme

1. Indira Gandhi National Old Age Pension Scheme.
2. National Family Benefit Scheme.
3. Janani Suraksha Yojana.
4. Handloom Weavers' Comprehensive Welfare Scheme.
5. Handicraft Artisans' Comprehensive Welfare Scheme.
6. Pension to Master craft persons.
7. National Scheme for Welfare of Fishermen and Training and Extension.
8. Janshree Bima Yojana.
9. Aam Admi Bima Yojana.
10. Rashtriya Swasthya Bima Yojana.

SCHEDULE II

[See section 2(m)]

S. No. Name of the Act

1. The Workmen's Compensation Act, 1923 (8 of 1923).
2. The Industrial Disputes Act, 1947 (14 of 1947).
3. The Employees' State Insurance Act, 1948 (34 of 1948).
4. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952).
5. The Maternity Benefit Act, 1961 (53 of 1961).
6. The Payment of Gratuity Act, 1972 (39 of 1972).

E. M. DONN,Deputy Secretary to the Govt. of Meghalaya,
Law (B) Department.

THE NATIONAL INVESTIGATION AGENCY ACT, 2008.

CHAPTER I

PRELIMINARY

2. Definitions.

CHAPTER II

NATIONAL INVESTIGATION AGENCY

3. Constitution of National Investigation Agency.
4. Superintendence of National Investigation Agency.
5. Manner of constitution of Agency and conditions of service of members.

CHAPTER III

INVESTIGATION BY THE NATIONAL INVESTIGATION AGENCY

6. Investigation of Scheduled Offences.
7. Power to transfer investigation to State Government.
8. Power to investigate connected offences.
9. State Government to extend assistance to National Investigation Agency.
10. Power of State Government to investigate Scheduled Offences.

CHAPTER IV

SPECIAL COURTS

11. Power of Central Government to constitute Special Courts.
12. Place of sitting.
13. Jurisdiction of Special Courts.
14. Powers of Special Courts with respect to other offences.
15. Public Prosecutors.
16. Procedure and powers of Special Courts.
17. Protection of witnesses.
18. Sanction for prosecution.
19. Trial by Special Court to have precedence.
20. Power to transfer cases to regular courts.
21. Appeals.
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CHAPTER V**MISCELLANEOUS****CLAUSES**

23. Power of High Courts to make rules.

24. Power to remove difficulties.

25. Power to make rules.

26. Laying of rules.

THE SCHEDULE.

THE NATIONAL INVESTIGATION AGENCY ACT, 2008.

AN

ACT

to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

CHAPTER I**PRELIMINARY**

1. (1) This Act may be called the National Investigation Agency Act, 2008.

(2) It extends to the whole of India and it applies also—

(a) to citizens of India outside India;

(b) to persons in the service of the Government wherever they may be; and

(c) to persons on ships and aircrafts registered in India wherever they may be.

Short title,
extent and
application.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “Agency” means the National Investigation Agency constituted under section 3;

(b) “Code” means the Code of Criminal Procedure 1973;

2 of 1974.

(c) “High Court” means the High Court within whose jurisdiction the Special Court is situated;

(d) “prescribed” means prescribed by rules;

(e) “Public Prosecutor” means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 15;

(f) “Schedule” means the Schedule to this Act;

(g) “Scheduled Offence” means an offence specified in the Schedule;

(h) “Special Court” means a Special Court constituted under section 11 or, as the case may be, under section 22;

(i) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

NATIONAL INVESTIGATION AGENCY

Constitution of National Investigation Agency.

3. (1) Notwithstanding anything in the Police Act, 1861, the Central Government may constitute a special agency to be called the National Investigation Agency for investigation and prosecution of offences under the Acts specified in the Schedule.

5 of 1861.

(2) Subject to any orders which the Central Government may make in this behalf, officers of the Agency shall have throughout India in relation to the investigation of Scheduled Offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of offences committed therein.

(3) Any officer of the Agency of, or above, the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise throughout India, any of the powers of the officer-in-charge of a police station in the area in which he is present for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.

Superintendence of National Investigation Agency.

4. (1) The superintendence of the Agency shall vest in the Central Government.

(2) The administration of the Agency shall vest in an officer designated as the Director-General appointed in this behalf by the Central Government who shall exercise in respect of the Agency such of the powers exercisable by a Director-General of Police in respect of the police force in a State, as the Central Government may specify in this behalf.

Manner of constitution of Agency and conditions of service of members.

5. Subject to the provisions of this Act, the Agency shall be constituted in such manner as may be prescribed and the conditions of service of persons employed in the Agency shall be such as may be prescribed.

CHAPTER III

INVESTIGATION BY THE NATIONAL INVESTIGATION AGENCY

6. (1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.

Investigation
of Scheduled
Offences.

(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, *suo motu*, direct the Agency to investigate the said offence.

(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.

7. While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may—

Power to
transfer
investigation
to State
Government.

(a) if it is expedient to do so, request the State Government to associate itself with the investigation; or

(b) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.

8. While investigating any Scheduled Offence, the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence.

Power to
investigate
connected
offences.

9. The State Government shall extend all assistance and co-operation to the Agency for investigation of the Scheduled Offences.

State
Government
to extend
assistance to
National
Investigation
Agency.

10. Save as otherwise provided in this Act, nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any Scheduled Offence or other offences under any law for the time being in force.

Power of
State
Government
to investigate
Scheduled
Offences.

CHAPTER IV

SPECIAL COURTS

Power of
Central
Government
to constitute
Special
Courts.

11. (1) The Central Government shall, by notification in the Official Gazette, for the trial of Scheduled Offences, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.

(3) A Special Court shall be presided over by a judge to be appointed by the Central Government on the recommendation of the Chief Justice of the High Court.

(4) The Agency may make an application to the Chief Justice of the High Court for appointment of a Judge to preside over the Special Court .

(5) On receipt of an application under sub-section (4), the Chief Justice shall, as soon as possible and not later than seven days, recommend the name of a judge for being appointed to preside over the Special Court.

(6) The Central Government may, if required, appoint an additional judge or additional judges to the Special Court, on the recommendation of the Chief Justice of the High Court.

(7) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge in any State.

(8) For the removal of doubts, it is hereby provided that the attainment, by a person appointed as a judge or an additional judge of a Special Court, of the age of superannuation under the rules applicable to him in the service to which he belongs shall not affect his continuance as such judge or additional judge and the Central Government may by order direct that he shall continue as judge until a specified date or until completion of the trial of the case or cases before him as may be specified in that order.

(9) Where any additional judge or additional judges is or are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among all judges including himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

Place of
sitting.

12. A Special Court may, on its own motion, or on an application made by the Public Prosecutor and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place other than its ordinary place of sitting.

Jurisdiction of
Special
Courts.

13. (1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.

(2) If, having regard to the exigencies of the situation prevailing in a State if,—

(a) it is not possible to have a fair, impartial or speedy trial; or

(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a judge of the Special Court or any of them; or

(c) it is not otherwise in the interests of justice,

the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General for India, be supported by an affidavit or affirmation.

14.(1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.

Powers of
Special Courts
with respect
to other
offences.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or, as the case may be, under such other law.

15.(1) The Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Public
Prosecutors.

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

16. (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.

Procedure
and powers of
Special
Courts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is not desirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to, and in relation to, a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding one year and with fine which may extend to five lakh rupees.

(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Special Court under sub-section (2) of section 13 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, but subject to the provisions of section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

Protection
of witnesses.

17. (1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held *in camera* if the Special Court so desires.

(2) On an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, if the Special Court is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed; and

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to one thousand rupees.

Sanction for
prosecution.

18. No prosecution, suit or other legal proceedings shall be instituted in any court of law, except with the previous sanction of the Central Government, against any member of the Agency or any person acting on his behalf in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

Trial by
Special Court
to have
precedence.

19. The trial under this Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance.

Power to
transfer cases
to regular
courts.

20. Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

Appeals.

21. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days.

22. (1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the Schedule.

Power of
State
Government
to constitute
Special
Courts.

(2) The provisions of this Chapter shall apply to the Special Courts constituted by the State Government under sub-section (1) and shall have effect subject to the following modifications, namely—

(i) references to “Central Government” in sections 11 and 15 shall be construed as references to State Government;

(ii) reference to “Agency” in sub-section (1) of section 13 shall be construed as a reference to the “investigation agency of the State Government”;

(iii) reference to “Attorney-General for India” in sub-section (3) of section 13 shall be construed as reference to “Advocate-General of the State”.

(3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted.

CHAPTER V

MISCELLANEOUS

23. The High Court may, by notification in the Official Gazette, make such rules, as it may deem necessary for carrying out the provisions of this Act relating to Special Courts within its territory.

Power of
High Courts
to make rules.

24. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Power to
remove
difficulties.

Provided that no order shall be made, under this section after the expiration of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

25. (1) The Central Government may, by notification in the official Gazette, make rules for carrying out the provisions of this Act.

Power to
make rules.

(2) In particular, and without prejudice to the generality to the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of constitution of the Agency and the conditions of service of persons employed in the Agency under section 5;

(b) any other matter which is required to be, or may be, prescribed.

Laying of
rules.

26. Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE

[See section 2(1)(f)]

1. The Atomic Energy Act, 1962 (33 of 1962);
2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);
3. The Anti-Hijacking Act, 1982 (65 of 1982);
4. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982);
5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);
6. The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);
7. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);
8. Offences under—
 - (a) Chapter VI of the Indian Penal Code (45 of 1860) [sections 121 to 130 (both inclusive)];
 - (b) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860).

THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2008

AN

ACT

*further to amend the Unlawful Activities (Prevention) Act, 1967.***BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—****1. This Act may be called the Unlawful Activities (Prevention) Amendment Act, 2008. Short title.**

37 of 1967.

2. In the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the principal Act), after long title and before the enacting formula, the following preamble shall be inserted, namely:— Insertion of Preamble.

“WHEREAS the Security Council of the United Nations in its 4385th meeting adopted Resolution 1373 (2001) on 28th September, 2001, under Chapter VII of the Charter of the United Nations requiring all the States to take measures to combat international terrorism;

AND WHEREAS Resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1735 (2006) and 1822 (2008) of the Security Council of the United Nations require the States to take action against certain terrorists and terrorist organisations, to freeze the assets and other economic resources, to prevent the entry into or the transit through their territory, and prevent the direct or indirect supply, sale or transfer of arms and ammunitions to the individuals or entities listed in the Schedule;

AND WHEREAS the Central Government, in exercise of the powers conferred by section 2 of the United Nations (Security Council) Act, 1947 has made the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007;

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AND WHEREAS it is considered necessary to give effect to the said Resolutions and the Order and to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto.”

Amendment
of section 2.

3. In section 2 of the principal Act,—

(i) in clause (d), the words “and includes a Special Court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008;” shall be inserted at the end;

(ii) after clause (e), the following clause shall be inserted, namely:—

‘(ea) “Order” means the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007, as may be amended from time to time;’;

(iii) in clause (g), after the words “for the purpose of a terrorist organisation”, the words “or terrorist gang” shall be inserted at the end;

(iv) for clause (h), the following clauses shall be substituted, namely:—

‘(h) “property” means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and legal documents, deeds and instruments in any form including electronic or digital, evidencing title to, or interest in, such property or assets by means of bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, cash and bank account including fund, however acquired;

(ha) “Schedule” means the Schedule to this Act;’.

Substitution of
new section
for section 15.
Terrorist act.

4. For section 15 of the principal Act, the following section shall be substituted, namely:—

“15. Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act,

commits a terrorist act.

Explanation.—For the purpose of this section, public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central Government as a public functionary.”

5. After section 16 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 16A.

“16A. Whoever intentionally, by use of force or threat of use of force or by any other means, demands any bomb, dynamite or other explosive substance or inflammable substances or fire arms or other lethal weapons or poisonous or noxious or other chemicals or any biological, radiological, nuclear material or device, with the intention of aiding, abetting or committing a terrorist act, shall be punishable with imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

Punishment for making demands of radioactive substances, nuclear devices, etc.

6. For section 17 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 17.

“17. Whoever, in India or in a foreign country, directly or indirectly, raises or collects funds or provides funds to any person or persons or attempts to provide funds to any person or persons, knowing that such funds are likely to be used by such person or persons to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.”

Punishment for raising funds for terrorist act.

7. In section 18 of the principal Act, for the words “incites or knowingly facilitates”, the words “incites, directs or knowingly facilitates” shall be substituted.

Amendment of section 18.

8. After section 18 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 18A and 18B.

“18A. Whoever organises or causes to be organised any camp or camps for imparting training in terrorism shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for organising of terrorist camps.

18B. Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.”

Punishment for recruiting of any person or persons for terrorist act.

9. In section 23 of the principal Act, —

Amendment of section 23.

(a) in sub-section (1), for the words “If any person with intent to aid any terrorist contravenes”, the words “If any person with intent to aid any terrorist or a terrorist organisation or a terrorist gang contravenes” shall be substituted.

(b) in sub-section (2), for the words "Any person who, with the intent to aid any terrorist", the words "Any person who with the intent to aid any terrorist, or a terrorist organisation or a terrorist gang" shall be substituted.

Amendment of section 24.

10. In section 24 of the principal Act, in sub-section (2), after the words "proceeds of terrorism whether held by a terrorist or", the words "terrorist organisation or terrorist gang or" shall be inserted.

Amendment of section 25.

11. In section 25 of the principal Act, in sub-section (5), in the *Explanation*, after clause (c), the following clause shall be inserted, namely:—

"(ca) credit or debit cards or cards that serve a similar purpose;"

Insertion of new sections 43A to 43F. Power to arrest, search, etc.

12. After section 43 of the principal Act, the following sections shall be inserted, namely:—

‘43A. Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.

Procedure of arrest, seizure, etc.

43B. (1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.

Application of provisions of Code.

43C. The provisions of the Code shall apply, insofar as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act.

Modified application of certain provisions of the Code.

43D. (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody."

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

43E. In a prosecution for an offence under section 15, if it is proved —

(a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or

(b) that by the evidence of the expert the finger-prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

Presumption
as to offence
under section
15.

the Court shall presume, unless the contrary is shown, that the accused has committed such offence.

43F. (1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, with the prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or

Obligation to
furnish
information.

authority of the Central Government or a State Government or a local authority or a bank, or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in his or its possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Act.

(2) The failure to furnish the information called for under sub-section (1), or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Notwithstanding anything contained in the Code, an offence under sub-section (2) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of section 262] shall be applicable thereto.’.

Amendment of section 45.

13. Section 45 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation, within such time as may be prescribed, to the Central Government or, as the case may be, the State Government.”.

Insertion of new section 51A.

14. After section 51 of the principal Act, the following section shall be inserted, namely:—

Certain powers of the Central Government.

“51A. For the prevention of, and for coping with terrorist activities, the Central Government shall have power to—

(a) freeze, seize or attach funds and other financial assets or economic resources held by, on behalf of or at the direction of the individuals or entities listed in the Schedule to the Order, or any other person engaged in or suspected to be engaged in terrorism;

(b) prohibit any individual or entity from making any funds, financial assets or economic resources or related services available for the benefit of the individuals or entities listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorism;

(c) prevent the entry into or the transit through India of individuals listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorism.”.

Amendment of section 52.

15. In section 52 of the principal Act, in sub-section (2), after clause (e), the following clause shall be inserted, namely:—

“(ee) the time within which sanction for prosecution and recommendation to the Central Government shall be given under sub-section (2) of section 45, and”.

Amendment of section 53.

16. Section 53 of the principal Act, shall be renumbered as sub-section (1) thereof and after sub-section as so renumbered, the following sub-section shall be inserted, namely:—

“(2) The Order referred to in entry 33 of the Schedule and every amendment made to that Order shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions.”.

17. In the Schedule to the principal Act after entry 32, the following entry shall be inserted, namely:—

Amendment
of Schedule.

43 of 1947.

“33. Organisations listed in the Schedule to the U.N. Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007 made under section 2 of the United Nations (Security Council) Act, 1947 and amended from time to time.”.

E. M. DONN,

Deputy Secretary to the Govt. of Meghalaya,
Law (B) Department.